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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/642,746

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EXAMINER

HAND, MELANIE JO

ART UNIT

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3761

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/642,746	<b>Applicant(s)</b> HERMANSSON ET AL.	
	<b>Examiner</b> MELANIE J. HAND	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed January 29, 2008 have been fully considered but they are not persuasive.

With respect to arguments regarding the rejection of claims 1-3 and 5-15: Applicant argues on Page 3 that Komatsu teaches away from including at least one fixing tongue extending only from the front end of the pad. This is not persuasive. Komatsu teaches that the at least one fixing tongue 7,8 is provided to affix the pad to panties 12. This can be accomplished with at least one fixing tongue 7 extending in the longitudinal direction of the instant pad only from the front end portion as recited in claim 1. Komatsu does not teach anywhere in the translation provided that the arrangement of flap 8 as shown in the representative drawing in the Abstract is necessary for the pad to function as intended. Thus, Komatsu does not teach away from having only one or more fixing tongues extending only from the front end portion of pad 1.

With respect to arguments regarding claim 4, the claim rejections have been restated to show that claim 4 was in fact addressed in the rejection that also addresses claims 1-3 and 5 but was not included in the claim rejection heading.

With respect to arguments regarding claim 13: Claim 13 depends from claim 1. Komatsu suggests only one or more fixing tongues 7 extending only from the front end portion. As stated with respect to claim 1 *supra*, Komatsu does not teach away from at least one fixing tongue extending only from the front end portion of the pad 1. Thus, since Komatsu teaches two fixing tongues explicitly, does not teach away from modifying the instant pad 1 so as to have the two

tongues 7,8 extending only from the front end portion, and teaches that the adhesives secure the pad in place to a user's panties 12, Komatsu renders claim 13 obvious.

With respect to arguments regarding claim 15: Applicant argues that removing flap 8 means removing the fastener 10, thus Komatsu also teaches away from claim 15. This is not persuasive because both fasteners 10 of tongues 7 and 8 are disposed on the backing layer. Thus since Komatsu fairly suggests adding a second tongue to the front end of the pad, and those tongues attach to the backing layer via adhesive fastener 10, Komatsu also fairly suggests a second fastener for the second tongue arranged on the backing layer of the absorbent part, wherein a removable protective layer is also arranged over the second fastener as it would be identical to fastener 10 of tongue 7 having removable protective layer in the form of release paper 11.

With respect to arguments regarding the rejection of claims 16 and 17: Applicant argues that modifying the shape of the pad of Komatsu would render the pad of Komatsu unsatisfactory for its intended purpose. This is not persuasive because modifying Komatsu so as to be triangular in shape as taught by Moretz would still provide a means at the narrower end for a flap to be created such as tongue 8. The combined teaching would also satisfy the limitations of claim 16 because the claim only requires that the pad have its smallest extent in a part which is located away from the fixing tongue, which would be the tongue extending only from the front portion as recited in claim 1, and taught by Komatsu in the form of tongue 7. The narrower end, being closer to the back tongue of the combined teaching would still be located away from the fixing tongue extending only from the front. Applicant is reminded again that the presence of tongue 8 in the pad of Komatsu does not preclude the pad of Komatsu as valid prior art. Komatsu still fairly suggests at only one or more tongues extending from only the front portion while teaching tongue 8.

Applicants' arguments with regard to dependent claims 2,3,5-12 and 18 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al. (JP 11-318985-English translation).

With respect to **claim 1**: Komatsu discloses a disposable incontinence pad having a longitudinal direction parallel to the longer two sides of the article, and a transverse direction perpendicular to the longitudinal direction. The pad absorbs bodily fluid such as urine and is thus considered herein to be adapted for men. The pad comprises an absorbent part with a liquid-permeable upper surface layer 2, a lower backing layer 3, an absorbent body 1 arranged between the liquid permeable surface layer and the backing layer. The pad comprises a front portion nearest the front waist area of the wearer and a fastening system in the form of tongues 7,8 and adhesive 10 for fixing the pad 1 to a pair of underpants in the form of panties 12. The fastening system 7/8/10 includes one or more fixing tongues 7,8 extending in the longitudinal direction of the pad only from the front end portion of the pad. The pad 1 is fastened to the pair of underpants 12 only by virtue of said fastening system 7/8/10. With regard to the limitation "said fastening system preventing movement of the incontinence pad relative to the genitals of the wearer", since the pad of Komatsu meets all of the limitations as to a fastening system, wherein only one of the tongues would be required to prevent movement, the fastening system of Komatsu inherently and necessarily prevents movement of the incontinence pad relative to the genitals of the wearer.

Komatsu teaches one tongue that extends only from the front portion, but Komatsu does not teach that the only one or more fixing tongues 7 or 8 extends only from the front end portion of the pad. However, since the function of the tongues is to adhere the pad to panties 12 and this can still be achieved with only one or more tongues extending only from the front end portion of the pad, it would be obvious to one of ordinary skill in the art to modify the article of Komatsu so

as to have only one fixing tongue 7 that extending only from the front portion of said absorbent body to maintain the ability to secure the pad to a user's panties with a reasonable expectation of success, while still preventing movement of the pad during wear.

With respect to **claim 2**: The fixing tongue 7 of Komatsu is an extension of the liquid-permeable surface layer 2 and backing layer 3. ([0015])

With respect to **claim 3**: The fixing tongue 7 is an extension of the pad layers, thus the fixing tongue comprises a thin absorbent material layer, namely liquid permeable surface layer 2. Examiner's position is based upon the fact that liquid permeable materials are wettable and therefore must necessarily have some absorbent ability, though it may be only on a surface, chemical level due to differences in surface tension.

With respect to **claim 4**: The entire fixing tongue 7 comes to lie inside the edges of the absorbent part of the incontinence pad when the entire fixing tongue is folded over the liquid-permeable surface layer or the backing layer inasmuch as Komatsu teaches an embodiment in which the pad is of uniform width throughout. ([0024]) Examiner's position is based upon Komatsu's teaching that the fixing tongues can be folded around the waist of the pair of underpants 12. Upon folding, the tongue then is coextensive with the edge of the pad lying inside the panties 12.

With respect to **claim 5**: The fixing tongue 7 includes at least one fastener 10 to be fixed to the outside of an pair of underpants or fixing pants 12 during use.

With respect to **claim 6**: The fixing tongue 7 of Komatsu includes at least one fastener 10 being arranged to be fixed to the inside of the underpants in an area of the underpants between a crotch portion and a waist of the underpants. (see Fig.1 and [0016],[0017]).

With respect to **claim 7**: The fixing tongue 7 is arranged to be folded around the waist of a pair of underpants 12. A waist elastic of the underpants 12 fixes the incontinence pad via the fixing tongue 7 attaching to fasteners 10 superimposed over the waist elastic on the outer surface of backing layer 3. Thus the waist elastic of the panties 12 fixed the pad via the fixing tongue 7.

With respect to **claim 8**: The fixing tongue includes a fastener 10 arranged to be fixed to the outside of the fixing pants or underpants 12 on layer 3.

With respect to **claim 9**: Komatsu discloses an adhesive fastener covered by a protective layer (11 and 58, respectively), but do not expressly disclose that the adhesive is a pressure sensitive adhesive. However, it is known in the art to use a pressure sensitive adhesive for attachment sanitary articles to the wearer's undergarments. Thus, it would have been obvious to one of ordinary skill in the art to select a pressure sensitive adhesive, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

With respect to **claim 10**: Komatsu et al. discloses the claimed invention but do not expressly disclose that the backing layer is treated with a release agent. However, it is known in the art to treat the backing layers and release sheets of sanitary pads having adhesive so as to increase releasability. Thus, it would have been obvious to one of ordinary skill in the art to treat the backing layer with a release agent since it was known in the art to treat such layers with a



release agent to increase releasability. Komatsu thus also fairly suggests at least one fastener including a pressure-sensitive adhesive surface, the pressure-sensitive adhesive surface being connected removably to the release-agent-treated area of the backing layer.

With respect to **claim 11**: Komatsu discloses the claimed invention but does not expressly disclose that the fastener is a hook and loop fastener with a protective cover connected to the backing layer. However, it would have been obvious to one of ordinary skill in the art to provide the fastener of Komatsu as a hook and loop fastener since hook-and-loop fasteners and adhesive layers are art recognized equivalents for their use as attachment fasteners and the selection of any of these known equivalents to attach a sanitary pad to an absorbent article would be within the level of ordinary skill in the art. Komatsu thus fairly suggests a removable protective layer being arranged over the hook and loop surface, the protective layer being connected to the backing layer of the instant incontinence pad.

With respect to **claim 12**: The fixing tongue 7 of Komatsu comprises a band of adhesive inasmuch as it defines a two-dimensional layer covering the front face of the portion of tongue 7 contributed by the backing layer 3. ([0016]-[0017]).

With respect to **claim 13**: Komatsu teaches that the incontinence pad comprising two fixing tongues, but does not teach that they extend only from the front end portion. However, the function of the tongues is to adhere the pad to panties 12 and this can still be achieved with only one or more tongues extending only from the front end portion of the pad. Two fixing tongues would further secure the pad to the instant panties. Thus, it would be obvious to one of ordinary skill in the art to modify the article of Komatsu so as to have only one fixing tongue 7 that

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extending only from the front portion of said absorbent body to maintain the ability to secure the pad to a user's panties with a reasonable expectation of success, while still preventing movement of the pad during wear. Komatsu thus fairly suggests a pad comprising two fixing tongues extending only from the front end portion of the pad. It has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St Regis paper Co. v. Bemis. Co.* 193 USPQ 8 (7th Cir. 1977)

With respect to **claim 14**: The fixing tongue 7 is capable of being separated from the absorbent part of the incontinence pad inasmuch as any physical entity bonded to another by mechanical means can be separated from the second entity.

With respect to **claim 15**: Since Komatsu teaches that each tongue 7,8 has a fastener arranged on the backing layer 3, the article suggested by Komatsu having a second tongue identical to tongue 7 would thus have a second fastener arranged on the backing layer 3 of the absorbent part. Komatsu teaches a removable protective layer 11 arranged over the first fastener of tongue 7, thus by suggesting a tongue identical to tongue 7 that attaches in the exact same manner to backing layer 3 via a second fastener, Komatsu also fairly suggests a removable protective layer arranged over the second fastener of the second tongue. However, the function of the tongues is to adhere the pad to panties 12 and this can still be achieved with only one or more tongues extending only from the front end portion of the pad. Two fixing tongues would further secure the pad to the instant panties. Thus, it would be obvious to one of ordinary skill in the art to modify the article of Komatsu so as to have only one fixing tongue 7 that extending only from the front portion of said absorbent body to maintain the ability to secure the pad to a user's panties with a reasonable expectation of success, while still preventing movement of the

pad during wear. Komatsu thus fairly suggests a pad comprising two fixing tongues extending only from the front end portion of the pad. It has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art.

With respect to **claim 18**: Komatsu discloses the claimed invention but do not expressly disclose that the rear end portion of the pad includes pre-stressed elastic material configuring at least a portion of the pad into a bowl shape. However, it would have been obvious to one of ordinary skill in the art to modify the pad of Komatsu to provide pre-stressed elastic material since it is known with in the art to provide an absorbent article with pre-stressed elastic material in order to shape the article to better fit the wearer, as supported by Widlund et al. (US 5,366,452, column 1, lines 33-46) and Runeman et al. (column 2, lines 21-29).

4. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu in view of Moretz et al. (US 5,291,617).

With respect to **claim 16**: Komatsu discloses the claimed invention but does not expressly disclose that the absorbent part of the pad or the pad itself has a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue. Moretz discloses an absorbent pad 32 for a pair of underpants having a triangular shape, with the greatest extent in the traverse direction being located nearer the waist area than a smallest extent of the pad located away from the waist area (Figures). Moretz discloses that positioning the a pad having a triangular shaper in this manner permits moisture to wicked upward away from the crotch and into an air exposed to more air, implicitly leading to a drier feeling for the wearer. One would have been motivated to modify the absorbent pads of either Komatsu to

have a triangular shape, as taught by Moretz, since doing so would allow permit an increased sense of dryness to the wearer. Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent pads of either Komatsu to have a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue since doing so would allow permit an increased sense of dryness to the wearer. The combined teaching of Komatsu and Moretz thus renders the limitation "the absorbent part of the incontinence pad having its greatest extent in the transverse direction in a part which, in the longitudinal direction, is located towards the fixing tongue and its smallest extent in a part which, in the longitudinal direction, is located away from the fixing tongue" obvious.

With respect to **claim 17**: Moretz discloses an absorbent pad 32 for a pair of underpants having a triangular shape, with the greatest extent in the traverse direction being located nearer the waist area than a smallest extent of the pad located away from the waist area. ('617, Fig. 3)

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Examiner, Art Unit 3761

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